

1 Arthur J. Casey, SBN 123273  
Eran S. Forster, SBN 269711  
2 FORD, WALKER, HAGGERTY & BEHAR, LLP  
16450 Los Gatos Boulevard, Suite #110  
3 Los Gatos, California 95032  
Tel: (408) 660-3102  
4 Fax: (408) 660-3105  
Email: [acasey@fwhb.com](mailto:acasey@fwhb.com)  
5 [eforster@fwhb.com](mailto:eforster@fwhb.com)

6 Attorneys for Defendant  
COSTCO WHOLESALE CORPORATION

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 JAYASHREE SINGH,

12 Plaintiff,

13 vs.

14 COSTCO WHOLESALE CORPORATION,  
and DOES 1 TO 50,

15 Defendants.  
16  
17

No. 5:20-cv-08180-NC

**NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

**DATE: May 31, 2023**  
**TIME: 1:00 pm**

**JUDGE NATHANAEL COUSINS**

18 **PLEASE TAKE NOTICE** that Defendant COSTCO WHOLESALE CORPORATION's  
19 MOTION FOR SUMMARY JUDGEMENT is calendared for hearing on **May 31, 2023, at 1:00 pm**, in  
20 Courtroom 5 of this Court, hearing via Zoom video conference.

21 Defendant COSTCO WHOLESALE CORPORATION will move for an order granting  
22 summary judgement against plaintiff. This order is sought pursuant to Rule 56 of the Federal Rules of  
23 Civil Procedure and Local Rule of Civil Procedure 56, et seq.

24 This motion is based upon and supported by the following Memorandum of Points and  
25 Authorities, Separate Statement of Material Facts, the Declaration of Eran S. Forster, Declaration of  
26 Jorge Molina, Declaration of Jonathan Eric von Delden, and the exhibits attached herein, the pleadings  
27 and papers on file, and any oral argument the Court entertains on this motion.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

Table of Authorities..... *ii*

Statement of Issues to be Decided..... 1

Memorandum of Points & Authorities..... 2

    I. INTRODUCTION..... 2

    II. STATEMENT OF FACTS ..... 4

    III. LEGAL AUTHORITY..... 4

        A. Standard for Summary Judgment..... 4

            1. Moving Party's ..... 4

            2. Opposing Party’s Burden..... 5

            3. Summary Judgment is Mandatory if Plaintiff Cannot Establish  
                An Essential Element of Their Claim ..... 5

        B. Applicable Premise Liability Principles..... 5

        C. Lack of Notice May be Decided as a Matter of Law If The Inspection  
            Was Performed Less Than 30 Minutes Prior to the Fall..... 6

    IV. ARGUMENT..... 8

        A. Undisputed Evidence Shows That Costco Employees Did Not Have  
            Actual Notice of Any Slip Hazard Prior to Plaintiff’s Fall ..... 8

        B. Plaintiff Cannot Establish Constructive Notice of The Hazard  
            Prior to Plaintiff’s Fall..... 9

        C. Costco’s Has Shifted The Burden to Plaintiff to Present Admissible  
            Evidence That Costco Employees Had Notice of the Spill Prior to Plaintiff’s Fall  
            ..... 10

    V. CONCLUSION..... 11

**TABLE OF AUTHORITIES**

**CASES**

<i>Abromson v. Am. Pac. Corp.</i> , 114 F.3d 898, 902 (9th Cir.1997).....	5
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 250, 106 S.Ct. 2505 (198.....	5
<i>Calderon v. Target Corp.</i> , 2013 WL 4401430, at *2 (S.D. Cal. Aug. 15, 2013).....	7
<i>Cardoza v. Target Corp.</i> , (C.D. Cal., 2018 WL 3357489, at *3 June 22, 2018).....	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 323, 106 S.Ct. 2548 (1986).....	4,5
<i>Coomes v. Edmonds Sch. Dist. No. 15</i> , 816 F.3d 1255, 1259 (9 <sup>th</sup> Cir. 2016).....	4,5
<i>Eidem v. Target Corp.</i> (C.D. Cal., Aug. 24, 2011 WL 3756144, at 9).....	7,10
<i>Hall v. Aurora Loan Servs. LLC</i> , 215 Cal.App.4th 1134, 1139, 55 Cal.Rptr.3d 739(2013).....	5
<i>Howard v. Omni Hotels Mgmt. Corp.</i> , 203 Cal.App.4th 403, 421, 136 Cal.Rptr.3d 739 (2012).....	6
<i>In re Oracle Corp. Sec. Litig.</i> , 627 F.3d 376, 387 (9 <sup>th</sup> Cir. 2010).....	5
<i>Lujan v. Nat'l Wildlife Fed'n</i> , 497 U.S. 871, 888, 110 S.Ct. 3177, 111 (1990) .....	5
<i>Ortega v. Kmart Corp.</i> (2001) 26 Cal.4th 1200.....	6
<i>Paz v. California</i> , 22 Cal.4th 550, 559, 93 Cal.Rptr.2d 703, 994 P.2d 975 (2000).....	5

**STATUTES**

<i>Fed. R. Civ.P.56(a)</i> .....	4
<i>Fed. R. Civ.P.v(c), (e)</i> .....	5

**STATEMENT OF ISSUES TO BE DECIDED**

1. Whether Plaintiff can meet their burden of proof to support their causes of action for negligence and premise liability against defendant Costco Wholesale Corporation when defendant Costco did not have actual knowledge or constructive knowledge of any dangerous conditions or hazards before plaintiff slipped on a puddle of liquid caused by a spilled drink?
2. Whether Defendant Costco was negligent as a premise owner for plaintiff's slip-and-fall accident when plaintiff slipped on a puddle of liquid caused by a drink that spilled within 3 minutes after Costco inspected the area?

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION**

3 This matter involves a slip-and-fall accident that occurred at a Costco retail store on  
4 September 4, 2018 in San Jose, California. Plaintiff slipped on liquid from a spilled fountain drink at  
5 12:21 pm. The entire incident was captured on video. It is undisputed that defendant Costco did not  
6 have actual or constructive notice that a drink was spilled on the floor immediately prior to plaintiff's  
7 unfortunate accident.

8 Video footage captures Costco employee Debra Grant inspecting the area within feet of the  
9 accident at 12:17:14 pm<sup>1</sup> as part of an hourly inspection. She is seen again passing the area ten seconds  
10 later at 12:17:24 pm. Costco Membership Manager Jorge Molina subsequently walks over the area two  
11 minutes later at 12:19:59 pm. Plaintiff slips-and-falls seventy-nine (79) seconds later. Plaintiff's **slip-**  
12 **and-fall** is approximately **three minutes after the area was inspected** by Debra Grant pursuant to  
13 Costco's written policies and procedures.

14 Within that three-minute time frame, it appears from the video that a customer and her child  
15 spilled a soda causing the accident. Like plaintiff, Costco was unaware of the spill until after the  
16 accident occurred. While the accident is unfortunate, there are simply no facts indicating that Costco  
17 was negligent for causing the accident or for causing plaintiff's injuries.

18 Plaintiff alleges causes of action under legal theories of negligence and premises liability against  
19 defendant Costco. The facts do not support plaintiff's allegations. Costco and its employees were  
20 unaware of the spilled drink and did not have constructive notice of the spilled drink. California law is  
21 clear, a premise owner cannot be held liable under these theories without actual or constructive  
22 knowledge of the spill. Under California law, defendant Costco did not have constructive notice of the  
23 spilled drink as a matter of law because the spill occurred less than thirty minutes after Costco  
24 conducted a reasonable inspection via their employee, Debra Grant.

25 Furthermore, the record is devoid of any facts that plaintiff or defendant Costco was aware that  
26 the fountain drink had spilled prior to the incident. Consequently, plaintiff's causes of action against

27 <sup>1</sup> The time-day stamp on the video shows seconds and milliseconds (1000 milliseconds per  
28 second).

1 defendant Costco must be dismissed as a matter of law because defendant Costco did not have actual or  
 2 constructive notice of the spilled drink prior to plaintiff's fall. For these reasons, defendant Costco  
 3 respectfully requests that the Court grant its motion for summary judgement.

## 4 II. STATEMENT OF FACTS

5 On September 4, 2018, Plaintiff Jayashree Singh (hereinafter, "Plaintiff" or "Singh") was at  
 6 Costco Wholesale store number 1267 in San Jose, California. (Ex. A - Pltf's Trnscpt, 22:21-23; Ex. B –  
 7 Dec. of Jorge Molina, para. 2.). The accident occurred on a cement floor at the end of the food court  
 8 tables and in front of the tire shop. (Ex. B, para. 3.) Plaintiff was leaving a customer service counter and  
 9 slipped on a puddle of soda on the floor. (Ex. A, 47:10-12; Ex. C – Photographs.)

10 The incident was captured on video. (Ex. B, para 4; Ex D – Video of Incident.) The time of the  
 11 incident was time stamped on the video. (Id.) The timestamp of the incident was approximately  
 12 12:21:25 pm. (Ex. A, 67:14-68:11; Ex. B, para. 4; Ex. D).

13 Costco has employees designated as "floor walkers." (Ex. E – Dec. of Jonathan Eric von Delden, para.  
 14 3.) The floor walkers are responsible for inspecting the store for safety concerns. (Id.) The designated  
 15 floor walker will inspect every aisle for unsafe conditions and potential hazards by inspecting each aisle  
 16 and walkway of the store. (Id.) If a hazard is observed, the floor walker will report the hazard  
 17 immediately. (Id.) The floor walker will also carry an inspection sheet that is attached to a clipboard.  
 18 (Id.) The floor walker is required to indicate on the safety inspection sheet that they completed their  
 19 inspection of a particular area (identified by zone) of the store and affirmatively indicate whether any  
 20 hazards were observed during their inspection. (Id.) They will also indicate the begin time and end time  
 21 of their inspection followed by printing their last name and initials at the bottom of the sheet. (Id.)

22 Debra Grant performed an inspection of the food and is first seen on video of the food court at  
 23 12:16:57 pm. (Ex. E, para. 7; Ex. D) Grant is subsequently seen inspecting the area within feet of where  
 24 plaintiff subsequently falls at 12:13 pm and 12:17:24 pm. (Ex. E, para. 7; Ex. D) She is in a wheelchair  
 25 and is holding a clipboard for her safety inspection sheet. (Ex. D; Ex. F.) She does not report seeing any  
 26 spills or hazards during her inspection (Ex. E, para. 10; Ex. G). She is seen leaving the vicinity at  
 27 12:17:36. (Ex. D.)

1 The Front-End Manager Jorge Molina is then seen walking in approximately the exact spot  
 2 where the incident subsequently occurs. (Ex. E, para. 6, 7, 10; Ex D; Ex. H.) The time was 12:19:59:82  
 3 pm, exactly seventy-nine (79) seconds prior to the incident. (Id.) Molina did not observe any spilled  
 4 sodas on the floor. (Ex. E, para. 6, 7, 10.) He also did not step into any puddles. (Id.) His shoes  
 5 remained dry and did not become sticky. Molina reported that as part of his training as a Costco  
 6 employee and manager that he was continuously monitoring for hazards as he was walking. (Id.)

7 At 12:20:02 pm, a Costco customer wearing a red head covering is observed pushing a shopping  
 8 cart with a soda unsecured in the basket area of the shopping cart. (Ex. D; Ex. E, para. 13.) As she  
 9 approaches the end of the food court, a younger person, presumably her child, jerks the shopping cart to  
 10 her right. (Ex. D.) Between 12:20:25 pm to 12:20:29 pm, the shopping cart is being thrust over the  
 11 area of the spilled drink. (Ex. D; Ex. I.) The child is seen immediately stopping the cart and looking at  
 12 the floor behind him. The woman grabs the cup from the cart and walks back briskly towards the soft  
 13 drink machines. (Ex. D; Ex. J.) The child is seen walking away from the area, grabbing napkins, and  
 14 appears to be headed back but changes his mind. (Ex. D.)

15 Simultaneously, plaintiff is seen walking and slipping on the soda. (Ex. D. Ex. K.)

16 At 12:20:02, the Costco customer returns to the area with a soft drink in her left hand and straw  
 17 in her right hand. (Ex. E, para 13; Ex. D, at 12:20:02; Ex. L.) The child appears visibly distraught,  
 18 repeatedly burying his head into his hands.

### 19 III. LEGAL AUTHORITY

#### 20 A. **STANDARD FOR SUMMARY JUDGEMENT**

21 Summary judgment is appropriate where “there is no genuine dispute as to  
 22 any material fact and the movant is entitled to judgment as a matter of law.” *Fed.R.Civ.P.56(a)*.

#### 23 1. Moving Party’s Burden

24 The moving party bears the initial burden of identifying relevant portions of the record that  
 25 demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim  
 26 upon which Plaintiff seeks judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91  
 27 L.Ed.2d 265 (1986).

28 The moving party can meet this burden by showing that there is an absence of evidence to support  
 the nonmoving parties, in this case Plaintiff’s, case. *Coomes v. Edmonds Sch. Dist. No. 15*, 816 F.3d

1 1255, 1259 (9<sup>th</sup> Cir.2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9<sup>th</sup> Cir. 2010). In  
 2 other words, Costco can meet its initial burden in this motion by showing through discovery responses  
 3 or deposition testimony that Plaintiff has no evidence to establish notice of a dangerous condition.

## 4 **2. Opposing Party's Burden**

5 If the moving party meets its initial burden, the burden shifts to the opposing party to set out  
 6 specific facts showing a genuine issue for trial in order to defeat the motion. *Anderson v. Liberty*  
 7 *Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Fed.R.Civ.P.* 56(c),  
 8 (e). The nonmoving party must not simply rely on the pleadings and must do more than make  
 9 "conclusory allegations [in] an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888, 110 S.Ct.  
 3177, 111 L.Ed.2d 695 (1990); *see also Celotex*, 477 U.S. at 324, 106 S.Ct. 2548.

10 "This burden is not a light one. The non-moving party must show more than the mere  
 11 existence of scintilla of evidence. The non-moving party must do more than just show that  
 12 there is some "metaphysical" doubt as to the material facts in issue. In fact, the non-  
 13 moving party must come forth with evidence from which a jury could reasonably render a  
 verdict in the non-moving party's favor."

14 *Coomes v. Edmonds Sch. Dist. No. 15*, 816 F.3d 1255, 1259 (9<sup>th</sup> Cir.2016) (quoting *In re*  
*Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9<sup>th</sup> Cir. 2010).

## 15 **3. Summary Judgment is Mandatory if Plaintiff Cannot Establish an Essential Element** 16 **of Their Claim.**

17 Summary judgment must be granted for the moving party if the nonmoving party "fails to make  
 18 a showing sufficient to establish the existence of an element essential to that party's case, and on which  
 19 that party will bear the burden of proof at trial." *Abromson v. Am. Pac. Corp.*, 114 F.3d 898, 902 (9<sup>th</sup>  
 20 Cir.1997). In this case if Plaintiff cannot establish that Costco's employees had actual or constructive  
 21 notice of any slip hazard before Plaintiff's fall, Costco is entitled to judgment as a matter of  
 law.

## 22 **B. APPLICABLE PREMISE LIABILITY PRINCIPLES**

23 Prior notice of a dangerous condition is an essential element of a premises liability action. To  
 24 recover for negligence under California law, a Plaintiff must show (1) that Defendant owed Plaintiff a  
 25 duty of care; (2) that Defendant breached that duty; (3) that the breach was the legal and proximate  
 26 cause of Plaintiff's injury; and (4) that Plaintiff suffered damages. *Paz v. California*, 22 Cal.4th 550,  
 559, 93 Cal.Rptr.2d 703, 994 P.2d 975 (2000). "The same concepts of duty applicable to general  
 27 negligence claims apply to premises liability claims." *Hall v. Aurora Loan Servs. LLC*, 215  
 28 Cal.App.4th 1134, 1139, 155 Cal.Rptr.3d 739 (2013).



1 In *Howard v. Omni Hotels Mgmt. Corp.*, 203 Cal.App.4th 403, 421, 136 Cal.Rptr.3d 739  
 2 (2012), the California Court of Appeal discussed the negligence principles applicable to premises  
 3 liability actions against commercial property owners:

4 “Commercial property owners are not insurers of the safety of their patrons,  
 5 although they owe the patrons duties “to exercise reasonable care in keeping the  
 6 premises relatively safe.” To exercise a degree of care that is commensurate with the  
 7 risks involved, the owner must make reasonable inspections of the portions of the  
 8 premises open to customers. An owner is liable for harm caused by a dangerous  
 9 condition, of which the owner had actual or constructive knowledge. An injured Plaintiff  
 has the burden of showing that the owner had notice of the defect in sufficient time to  
 correct it, but failed to take reasonable steps to do so. One way to carry that burden is to  
 raise an inference that the hazardous condition existed long enough for the owner to have  
 discovered it, if an owner exercising reasonable care would have learned of it.

10 “Hotel proprietors have a special relationship with their guests that gives rise to a  
 11 duty “to protect them against unreasonable risk of physical harm.” “The duty in each  
 12 case [as with common carriers] is only one to exercise reasonable care under the  
 13 circumstances. The Defendant is not liable where he neither knows nor should know of  
 the unreasonable risk....” However, hotel guests can reasonably expect that the hotel  
 owner will be reasonably diligent in inspecting ... for defects, and correcting them upon  
 discovery....

14 “The fact that an accident occurred does not give rise to a presumption that it was  
 15 caused by negligence. Instead, the injured Plaintiff must establish sufficient facts or  
 16 circumstances that support an inference of a breach of duty.”

17 *Id.* at 431–32, 136 Cal.Rptr.3d 739 (internal citations omitted; emphasis added).

18 In other words, prior knowledge or notice is an essential element in a Premises Liability action.  
 19 Property owners and operators must have either actual or constructive knowledge of the dangerous  
 20 condition to establish liability. *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200. Even if the court finds  
 21 that a dangerous condition existed on Defendant’s premises, Costco is still entitled to summary  
 22 judgment if its employees did not have actual or constructive knowledge of that condition prior to  
 Plaintiff’s fall.

23 **C. LACK OF NOTICE MAY BE DECIDED AS A MATTER OF LAW IF THE**  
 24 **INSPECTION WAS PERFORMED LESS THAN 30 MINUTES PRIOR TO THE**  
**FALL**

25 Prior notice of a condition may be established by either evidence of actual prior knowledge or  
 26 constructive knowledge if the condition existed for a substantial period of time.

27 The question of whether a Defendant can be charged with constructive notice can be decided by  
 28 the court as a matter of law. This is particularly true where there is undisputed evidence that an active  
 inspection was conducted of the relevant area less than thirty minutes before the incident. This

1 benchmark has been generally adopted by the judges of the Central and Southern Districts and has  
2 been approved by the Ninth Circuit.

3 The U.S. District Courts in the Central and Southern Districts have recognized the 30-minute  
4 benchmark. In the *Eidem v. Target Corp.* opinion, the Court explained:

5 “While the California courts have not set forth a specific time period that  
6 constitutes adequate care, the relevant cases all concern time periods of a half hour or  
7 longer between inspection and accident.”

8 *Eidem v. Target Corp.* (C.D. Cal., Aug 24, 2011, No. EDCV-10-0100 VAP).

9 The 30-minute benchmark was recently reiterated and reinforced in *Cardoza v. Target.*

10 “But as a matter of law, constructive notice is not a question for the jury in this  
11 action. Here, Ms. Batiste has affirmatively declared under oath that she actively  
12 inspected the area of aisle C53 where Plaintiff slipped just 10 minutes prior to the  
13 accident and did not see any water or other hazards on the floor at that time, and there is  
14 no evidence in the record that could lead any reasonable juror to doubt that. **As a general  
15 proposition, California courts apply a 30-minute threshold for submitting  
16 questions of actual notice to a jury -i.e., if there is undisputed evidence that an  
17 active inspection of the relevant area occurred less than 30 minutes before the  
18 accident, summary judgment in favor of the store owner is appropriate; if not, the  
19 question should be resolved by a jury.** See, e.g., *Alacan v. Target Corp.*, No. CV 14-  
20 04564-AB (VBKx), 2015 WL 10945603, at \*3 (C.D. Cal. June 26, 2015) (granting  
21 Target’s summary judgment motion where Target employee had inspected area seven  
22 minutes before accident, as “nothing less than thirty minutes between the last inspection  
23 and the Plaintiff’s fall has been held to raise a genuine dispute of material fact or  
24 sufficient to uphold a Plaintiff’s verdict.”) (collecting cases); *Eidem v. Target Corp.*, No.  
25 EDCV 10-01000 VAP (DTBx), 2011 WL 3756144, at \*9 (C.D. Cal. Aug. 24, 2011)  
26 (granting Target’s summary judgment motion where Target employee had inspected area  
27 15 minutes before the accident; “While California courts have not set forth a specific  
28 time period that constitutes adequate care, the relevant cases all concern time periods of a  
half hour or longer between inspection and accident.”; *Calderon v. Target Corp.*, No. 12-  
CV-1781-MMA (PCL), 2013 WL 4401430, at \*2 (S.D. Cal. Aug. 15, 2013) (granting  
Target’s summary judgment motion where Target employee had “walked through the  
[relevant] area within 30 minutes of the incident, and she did not notice, see, or identify  
any broken or defective stool”).”

*Cardoza v. Target Corp.* (C.D. Cal., June 22, 2018, No. CV172232MWFRAOX) 2018 WL  
3357489, at \*3.

It should be noted that the Ninth Circuit had reviewed the *Cardoza* opinion to grant summary  
judgment *de novo* and agreed with the court’s reasoning as recently as April 22, 2019, although the  
Ninth Circuit’s brief opinion was not selected for publication. *Cardoza v. Target Corp.*, 765 Fed.  
Appx. 360 (9th Cir. Cal., Apr. 22, 2019).

In short, while there is still no single universal time standard for conducting inspections, federal  
authorities in the Central and Southern Districts have consistently interpreted California law to mean

1 that if an active inspection had occurred less than 30 minutes prior to the incident, there is no triable  
2 issue of fact as to notice and the case should not go to a jury.

3 **IV. ARGUMENT**

4 **A. UNDISPUTED EVIDENCE SHOWS THAT COSTCO EMPLOYEES DID NOT**  
5 **HAVE ACTUAL NOTICE OF ANY SLIP HAZARD PRIOR TO PLAINTIFF'S**  
6 **FALL**

7 Costco employee and designated floor walker Debra Grant can be seen on video passing the area  
8 where the spill subsequently occurred on her wheelchair at 12:17:14pm and again at 12:17:24pm. The  
9 video captures her holding her clipboard, per Costco's procedure for filling out the daily Floor-Walk  
10 and Safety Inspection Sheet verifying that the floor-walker checked for hazards. The video captures  
11 Grant leaving the area by 12:17:36pm

12 Two minutes later, Costco Manager Jorge Molina can be seen walking over the exact area where  
13 the incident would subsequently occur. The time-stamp on the video records the time at 12:19:59:82pm.  
14 Molina is seen leaving the area by 12:20:14.

15 It appears from the video that a customer had an unsecured soft drink in her shopping cart and  
16 was headed towards the end of the food court. It appears that the cup was spilled when a younger  
17 person, presumably her child, suddenly grabs and pulls the cart over the area where plaintiff  
18 subsequently slips on a spilled fountain drink. The angle of the spill is consistent with the direction of  
19 the shopping car when it was pushed over the area. The child distinctly looks back at the floor afterward  
20 as the mother grabs the cup out of the cart.

21 Neither one of them are seen notifying Costco employees of the spill or warning others. Instead,  
22 the mother grabs the cup and walks briskly towards the food and drink area. She exits the camera's  
23 view at 12:20:53. Her child appears to look back in the direction where the drink was spilled and  
24 subsequently grabs a handful of napkins and approaches the area where the drink was spilled. The child  
25 then turns around and walks back towards the food table as plaintiff simultaneously slips and falls at  
26 12:21:15 pm. The mother reappears on video at 12:21:38 holding the fountain-drink in her left hand  
27 while holding a new straw in her right hand. She does not appear to be carrying any paper towels or  
28 napkins and is not being accompanied by any Costco employees.

1 Grant and Molina did not have actual notice of the spilled drink because they both left the area  
2 prior to the drink being spilled.

3 Molina declared under oath that while walking the area he was observant of the immediate area  
4 around him. He walked directly over where the incident subsequently occurred. When he walked over  
5 the area, he did not observe any spilled liquids and his feet did not become sticky or wet. Plaintiff  
6 subsequently slips seventy-nine seconds later.

7 No other Costco employee had actual notice of the spill, either. This was confirmed by Molina.  
8 He declared under oath no other employee reported they were aware of the spilled drink or were  
9 advised of the spilled drink prior to plaintiff's fall.

10 Furthermore, Plaintiff herself testified that she is unaware of any Costco employee having  
11 knowledge of the spill prior to the accident.

12 Q: During the time that you were still at the building after you fell, did  
13 you hear any Costco employee say they knew that soda was on the floor before you  
slipped?

14 A: I don't remember anything."

15 In short, there is no evidence of Costco having actual notice of the spilled drink prior to the incident.

16 **B. UNDISPUTED EVIDENCE SHOWS THAT COSTCO EMPLOYEES DID NOT**  
17 **HAVE CONSTRUCTIVE NOTICE OF ANY SLIP HAZARD PRIOR TO**  
18 **PLAINTIFF'S FALL**

19 Constructive notice is a concept of inference. A plaintiff can infer that a defendant should have  
20 been on notice of a hazardous condition if the dangerous condition existed long enough that a  
21 reasonable inspection process would have revealed it. Where a plaintiff has no evidence as to how long  
22 a condition existed, he or she can infer that the condition existed for an unreasonable amount of time by  
23 showing that defendant did not inspect the premises for a long period of time. In this case, Plaintiff  
cannot establish either.

24 Costco designated specific employees as "floor walkers" to conduct their inspections. The floor  
25 walkers would inspect the premise for any hazards and immediately report any hazards they observed  
26 on their inspection sheet.

27 Here, no inferences can be drawn or presumptions be made that the spilled drink had been  
28 unattended for a long duration of time prior to the incident.

1 Costco employee and floor walker Debra Grant inspects the area four minutes prior to the  
 2 incident on September 4, 2023, at 12:17:14 pm and 12:17:24 pm. Grant is clearly captured on video  
 3 within feet of where the incident would subsequently take place four minutes later at 12:21:15pm.

4 Furthermore, Manager Jorge Molina inspected the floor as he walked in the exact area of the  
 5 incident 79 seconds prior to Plaintiff slipping at 12:19:59 pm. He did not observe any spilled drinks or  
 6 liquids. From surveillance footage, it appears that a customer spills the drink between 12:20:25:472 to  
 7 12:20:29:522. It appears that mother and child spilled the drink while hastily turning a shopping cart.  
 8 The child is then seen going to the tables at the food court without informing anybody. The mother is  
 9 seen walking off camera but there's no record or indication that she informed anybody.

10 No reasonable jury could find, nor could Plaintiff argue that Costco should have had  
 11 constructive notice of the spilled drink approximately fifty-five seconds after the spill occurred or  
 12 seventy-nine seconds after the area was inspected by Molina.

13 As this Court pointed out in the *Eidem v. Target* opinion, it is still Plaintiff's burden to show  
 14 through admissible evidence that the spill or other foreign substance had been on the floor long enough  
 15 to put Costco on notice of the condition. Plaintiff cannot meet her burden.

16 **C. COSTCO HAS SHIFTED THE BURDEN TO PLAINTIFF TO PRESENT**  
 17 **ADMISSIBLE EVIDENCE THAT COSTCO EMPLOYEES HAD NOTICE OF**  
**THE SPILL PRIOR TO PLAINTIFF'S FALL**

18 Costco has met its burden in this motion, by producing direct evidence, through the video,  
 19 deposition testimony, and declarations, that Costco did not have prior notice of any dangerous condition  
 20 on its premises, and specifically, of the spilled liquid that plaintiff slipped on. Costco's evidence is  
 21 sufficient to shift the burden to Plaintiff to prove by competent and admissible evidence that Costco  
 22 employees had either actual or constructive notice of the spill prior to Plaintiff's fall. Costco is entitled  
 23 to judgment as a matter of law in the absence of affirmative evidence showing that Costco employees  
 24 had actual prior knowledge or failed to conduct an active inspection within 30 minutes of the incident.

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the reasons stated herein, Defendant, Costco Wholesale Corporation, respectfully requests  
3 that the Court grant its motion for summary judgment.

4 Dated: April 21, 2023

FORD, WALKER, HAGGERTY & BEHAR, LLP

6 By: /s/ Arthur J. Casey

7 ARTHUR J. CASEY

8 ERAN S. FORSTER

Attorneys for Defendant

COSTCO WHOLESALE CORPORATION